

Mandatory Energy Benchmarking is On Its Way



We have discussed the issue of benchmarking and [energy reporting](#) on several occasions here at Musings. As the January 18, 2010 issue of ENR Magazine discusses, now cities and states are [getting on board](#) in a big way.

Washington, D.C. began requiring building owners to use the [EPA](#) Energy Star Portfolio Manager tool on January 1, 2010 and New York City passed a similar measure in December. The D.C. law is the

first to require *mandatory public disclosure* of energy performance. Such disclosure will create a public database of energy performance data.

While I understand that this data and its reporting will create energy accountability in a way that non-disclosure of this data would not, the possibilities for misuse or uses that impact the construction world abound. This energy reporting is a step beyond that of the [LEED](#) program in that the data is not just reported to the [USGBC](#), but to a public database. As such, the ease of access will impact contracts and contractors in an even bigger way than the USGBC requirements.

As I have stated before, the [problem of human interaction with buildings](#), and the time horizons for such reporting, create [potential contractual liability](#) for general contractors and architects that must be addressed. These must be addressed even sooner than anticipated because of the governmental actions making these issues even more time critical.

The temptation here would be to rail against the governmental action taken with what are likely the best of intentions or to decide to ignore these issues. However, despite my [Eeyore like tendencies](#), I am fully behind the sustainable enterprise and would rather work to deal with the [inevitability of such actions](#) through the careful drafting of contracts and [green leases](#). The use of these tools with the [proper guidance](#) can properly allocate the risks among owners, contractors, architects and tenants in a way that allows for the careful yet steady move toward a more sustainable and energy efficient built space.

In short (if it is not way too late for such an introduction to this sentence), energy reporting is here to stay, we just need to learn to deal with the risks brought on by these new requirements to assure that the goal, sustainable building, will be reached.

Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.

Image via [Wikipedia](#)